



City Clerk

CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk
200 East Santa Clara Street
San José, California 95113
Telephone (408) 535-1260
FAX (408) 292-6207

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSÉ)

I, Lee Price, City Clerk & Ex-Officio Clerk of the Council of and for the City of San José, in said County of Santa Clara, and State of California, do hereby certify that **Ordinance No. 28676**, the original copy of which is attached hereto, was passed for publication of title on the **1st day of December, 2009**, was published in accordance with the provisions of the Charter of the City of San José, and was given final reading and adopted on the **15th day of December, 2009**, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA, KALRA,
LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

VACANT: NONE

Said ordinance is effective as of **January 15, 2010**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San José, this **17th day of December, 2009**.

(SEAL)

LEE PRICE, MMC
CITY CLERK & EX-OFFICIO
CLERK OF THE CITY COUNCIL

ORDINANCE NO. 28676

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTIONS 19.32.120, 19.32.130, AND 19.32.140 OF CHAPTER 19.32 OF TITLE 19 OF THE SAN JOSE MUNICIPAL CODE RELATING TO AGREEMENTS TO CONSTRUCT PUBLIC IMPROVEMENTS PRIOR TO APPROVAL OF A FINAL SUBDIVISION MAP OR PARCEL MAP; AMENDING SECTIONS 14.04.160 AND 14.04.170 TO INCREASE THE CONTRACTING AUTHORITY OF THE PUBLIC WORKS DIRECTOR WITHOUT COMPETITIVE BIDDING UNDER SPECIFIED CIRCUMSTANCES; AND REPEALING SECTION 14.04.490 AND AMENDING SECTION 14.04.510 OF CHAPTER 14.04 OF TITLE 14 OF THE SAN JOSE MUNICIPAL CODE RELATING TO THE REPORTING OF PUBLIC WORKS CONTRACTS AND CHANGE ORDERS TO THE FINANCE DEPARTMENT AND COUNCIL

WHEREAS, pursuant to the provisions of Title 21 of the San José Municipal Code, the Director of Planning, Building and Code Enforcement has determined that the provisions of this ordinance do not constitute a project under the provisions of the California Environmental Quality Act of 1970, as amended;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 14.04.160 of Chapter 14.04 of Title 14 of the San José Municipal Code is amended to read as follows:

14.04.160 Public Works Projects Costing One Million Dollars Or Less

When the expenditures required for any specific public works project, excluding the cost of any materials, supplies or equipment which the City may have acquired or may separately acquire therefore, is one million dollars (\$1,000,000) or less, the City Council

has, and shall have the same authority with respect to such specific public works project as it has with respect to miscellaneous public works.

SECTION 2. Section 14.04.170 of Chapter 14.04 of Title 14 of the San José Municipal Code is amended to read as follows:

14.04.170 Public Works Projects Costing More Than One Million Dollars

Where the expenditure required for any specific public works project, excluding the cost of any supplies, materials or equipment which the City may have acquired or may separately acquire therefore, exceeds one million dollars(\$1,000,000), such specific public works project shall be contracted for and let by the City Council to the lowest responsible bidder after notice; provided and excepting, however, that:

- A. Intergovernmental contracts for the doing of any of said work need not be awarded to the lowest responsible bidder after notice, but may be authorized or awarded by the Council, or by the Director of Public Works if and to the extent that Director has been authorized to award, enter into or execute such contracts, without compliance with the above provisions of this Section;
- B. City-public utility contracts for the doing of any of such work need not be awarded to the lowest responsible bidder after notice, but may be authorized or awarded by the Council, or by the Director of Public Works if and to the extent that the Director has been authorized to award, enter into or execute such contracts, without compliance with the above provisions of this Section;
- C. City-private developer contracts for the doing of any such work need not be awarded to the lowest responsible bidder after notice, but may be authorized or awarded by the Council, or by the Director of Public Works if and to the extent that

the Director has been authorized to award, enter into or execute such contracts, without compliance with the above provisions of this Section;

- D. If the work involves highly technical or professional skills and the particular technical or professional skill or ability of the person selected to do such work is an important factor in the selection, the Council may award a major public works project requiring special skills to such person, or may authorize such a contract; or, if the possessor of such special skills is the Director of Public Works or a City employee or employees in the Department of Public Works, may authorize said Director and said employee or employees to do such work, without compliance with the above provisions of this Section;
- E. If the work, and the expenditure required therefore, are deemed by the Council to be of urgent necessity for the preservation of life, health or property, and such is authorized by resolution of the Council adopted by the affirmative vote of at least eight (8) members of the Council and containing a declaration of the facts constituting the urgency, the Council may award a major emergency public works project contract for such work, or authorize such a contract, or authorize the Director of Public Works to have such work done by City employees under the direction and control of the Director, without compliance with the above provisions of this Section;
- F. In situations where solicitation of bids would for any reason be an idle act, the Council may award a major public works project contract for which solicitation of bids is an idle act, or authorize such a contract for such work, or may authorize the Director of Public Works to have such work done by City employees under his or her direction and control, without compliance with the above provisions of this Section;

- G. Such other exceptions may be made as may be authorized by any of the following sections of this Part 2.

SECTION 3. Section 14.04.490 of Chapter 14.04 of Title 14 of the San José Municipal Code is hereby repealed.

SECTION 4. Section 14.04.510 of Chapter 14.04 of Title 14 of the San José Municipal Code is hereby amended to read as follows:

14.04.510 Public Report

- A. The Director of Public Works shall report to the public upon the City's official website, on a bi-annual basis, a report setting forth all contracts and change orders awarded or issued by the Director during the preceding quarter pursuant to the provisions of Section 14.04.300 through 14.04.370 of this Part, together with the amounts paid or payable by the City under each such contract or change order.
- B. The Director of Public Works shall report to the public upon the City's official website, on a bi-annual basis, a report setting forth all federal permits executed by the Director pursuant to Section 14.04.315 of this Part during the preceding quarter.

SECTION 5. Section 19.32.120 of Chapter 19.32 of Title 19 of the San José Municipal Code is hereby amended to read as follows:

19.32.120 Construction of Improvements Before Approval of Final Map

In the event the subdivider elects to construct the improvements required by the Director in connection with the subdivision before the final map is presented for approval to the City Engineer, the subdivider shall present to the City Engineer for approval the plans for such improvements. The subdivider of the subdivision shall also enter into an improvement agreement with the City, in a form approved by the City Attorney, agreeing to complete said improvements consistent with the approved improvement plans within eighteen (18) months from the date of execution of the agreement and approval of the improvements plans. Concurrently with the improvement agreement, the subdivider shall provide the City with the security required by Section 19.32.130, excepting that the required security for faithful performance may be waived at the discretion of the City Engineer. The subdivider shall also provide the City with a cleanup deposit in the manner and amount specified in Section 14.04.450 of Chapter 14.04 of Title 14 of this Code. Security for labor and materials and warranty security shall not be waived by the City Engineer.

Immediately upon execution of the improvement agreement and improvement plans by the City Engineer, the subdivider may commence the construction of such improvements in accordance with such plans and the standard specifications of the City in effect at the time of approval of the tentative map.

SECTION 6. Section 19.32.130 of Chapter 19.32 of Title 19 of the San José Municipal Code is hereby amended to read as follows:

19.32.130 Final Map -- Improvement Agreement Requirements

At the time the final map is presented for approval to the City Engineer, if the improvements required in connection with the subdivision have not been completed, plans for the improvements which the subdivider is required to construct in connection with the subdivision shall be presented to the City Engineer for approval unless plans therefore have been previously approved. Before approval and recording of the said

final map, the subdivider of the subdivision shall enter into an agreement with the City agreeing to complete the said improvements within eighteen (18) months from the date of execution of the agreement in consideration of the acceptance by the City of the dedications offered on the final map. Said agreement shall be secured by a good and sufficient security, in forms approved by the City Attorney, in the following minimum amounts:

- A. *Faithful performance*: one hundred percent (100%) of the total estimated of the cost of the public improvements conditioned upon the faithful performance of the act to be performed or agreement;
- B. *Labor and materials*: An additional one hundred percent (100%) of the total estimated cost of the public improvements securing payment to the contractor, to the subcontractors, and to persons furnishing labor, materials, or equipment for the improvement or the performance of the required act; and
- C. *Warranty*: An additional twenty-five percent (25%) of the total estimated of the cost of the public improvements for a period of one (1) year following the completion and acceptance thereof against any defective work or labor done or defective materials furnished, in the performance of the improvement agreement or the performance of the act. Such security shall be one of the following and in a form approved by the City Attorney
 - 1. Bond or bonds by one or more corporate sureties duly authorized by the California Insurance Commissioner to transact the business of insurance;
 - 2. A certificate of deposit in favor of the City; or
 - 3. An irrevocable standby letter of credit.

The subdivider of the subdivision shall also agree in said improvement agreement to furnish to the City a policy or policies of liability insurance to be paid for by said subdivider, which policy or policies of insurance shall meet the requirements of insuring the City, its officers and employees which are established by resolution of the City Council.

SECTION 7. Section 19.32.140 of Chapter 19.32 of Title 19 of the San José Municipal Code is hereby amended to read as follows:

19.32.140 Parcel Map-- Improvement Agreement Requirements

At the time the parcel map is presented for approval to the City Engineer, if the improvements required in connection with the subdivision have not been completed, plans for the improvements which the subdivider is required to construct in connection with the subdivision shall be presented to the City Engineer for approval unless plans therefore have been previously approved. Before approval and recording of the said parcel map, the subdivider of the subdivision shall enter into an agreement with the City agreeing to complete the said improvements within eighteen (18) months from the date of execution of the agreement in consideration of the acceptance by the City of the dedications offered on the parcel map. Said agreement shall be secured by a good and sufficient security, in forms approved by the City Attorney in the following minimum amounts:

- A. *Faithful performance:* one hundred percent (100%) of the total estimated of the cost of the public improvements conditioned upon the faithful performance of the act to be performed or agreement;
- B. *Labor and materials:* An additional one hundred percent (100%) of the total estimated cost of the public improvements securing payment to the contractor, to

the subcontractors, and to persons furnishing labor, materials, or equipment for the improvement or the performance of the required act; and

- C. *Warranty*: An additional twenty-five percent (25%) of the total estimated of the cost of the public improvements for a period of one (1) year following the completion and acceptance thereof against any defective work or labor done or defective materials furnished, in the performance of the improvement agreement or the performance of the act. Such security shall be one of the following and in a form approved by the City Attorney:

1. Bond or bonds by one or more corporate sureties duly authorized by the California Insurance Commissioner to transact the business of insurance;
2. A certificate of deposit in the name of the City; or
3. An irrevocable standby letter of credit.

The subdivider of the subdivision shall also agree in said improvement agreement to furnish to the City a policy or policies of liability insurance to be paid for by said subdivider, which policy or policies of insurance shall meet the requirements of insuring the City, its officers and employees which are established by resolution of the City Council.

PASSED FOR PUBLICATION of title this 1st day of December, 2009, by the following vote:

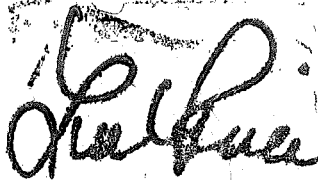
AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,
KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

ATTEST:



LEE PRICE, MMC
City Clerk



CHUCK REED
Mayor